GOVERNMENT OF MYSORE

Food, Civil Supplies and Labour Department

Labour Dispute :—Industrial Dispute between the workmen and the management of Mysore Electrical Industries Ltd., Bangalore-22.

Award of the Labour Court, Bangalore—Published.

Read the following papers :

(1) Letter No. 1117-18/72-73, dated 25th November 1972 fror Sri P. Srinivasacharya, Presiding Officer, Labour Court, Bangalore.

BEFORE THE PRESIDING OFFICER, LABOUR COURT, BANGALORE.

Dated this 25th day of November 1972

Present

Sri P. Srinivasacharya, B.A., LL.B., Presiding Officer

Reference No. 53 of 1969

I Party—

Workmen represented by the Secretary, Mysore Electrical Industries Workers Union, 1st Cross, Malleswaram, Bangalore-3.

Vs.

II Party—

The Management of Mysore Electrical Industries Ltd., Bangalore-22.

Reference

Government Order No. FCL 113 LLD 69, dated 28th March 1969.

AWARD

1. The Government of Mysore in their Order No. FCL 113 LLD 69, dated 28th March 1969 have referred an industrial dispute existing between the above named parties to this court for adjudication on the points of dispute noted below :—

> "Whether the Management of Mysore Electrical Industries Limited, Tumkur Road, Bangalore-22 are justified in terminating the services of the two employees viz., Sri R. A. Manickyam and Sri Narayana Rao ?

Whether Sri R. A. Manickyam and Sri Narayana Rao are entitled for reinstatement with back wages and continuity of service or to any other relief ?"

2. On behalf of the aggrieved workmen claim statement has been filed as follows :—Sri R. A. Manickyam joined service in the second party's factory at Okalipuram in the year 1969 and was working as a helper in the sub-assembly section. Sri Narayana Rao was employed as a fitter in the sub-assembly section from 1963 in the Okalipuram factory of the second party. The services of both these employees, were terminated by the second party by two orders, dated 11th September 1968. The orders of termination alleged loss of confidence as a ground for termination. Being aggrieved the first party union took up the dispute with the conciliation officer. The conciliation proceedings ended in failure. The workmen were served with a show cause notice stating that on 11th March 1968 they along with others took copper flates from the sub-assembly section and main stores section for the purposes of annealing. Some of those copper flates were alleged to have been left bind at the annealing spot though it was reported that all copper flates were brought back. It was further concluded that the two workmen had left them behind with a view to committing theft. It was alternatively suggested that this amounted to gross negligence on their Part. They were called upon as to why they should not be terminated for want of confidence in the light of the above allegations. The workmen submitted their explanations denying the allegations. An enquiry was held into the allegations by the Security Officer of the second party. Thereafter the Managing Director of the second party passes orders terminating the services of the two workmen. The enquiry held is not in order ; no reasonable opportunity was given to the workmen to defend themselves ; a joint enquiry was held and this has seriously prejudiced the workmen ; the charge-sheet is so worded as to indicate that the second party had prejudged the matter. In substance it is an instance of dismissal for the misconduct of theft/gross negligence. The findings of the enquiry officer are perverse. No misconduct is disclosed on the evidence let in at the enquiry. The past record of the workmen has not been taken into consideration. It is submitted that the orders of termination are liable to be set aside and the workmen should be reinstated with back wages and continuity of service.

3. On behalf of the second party counter statement has been filed as follows :—The facts relating to the issue of charge-sheets, holding of enquiry and the issue of the orders of termination are admitted. It is contended that the termination of the workmen was fully justified and there are no grounds for interfering with the order of Management. None of the ground of attack against the enquiry

and the order of termination in the claim statement is tenable. Fully opportunity was given to the employees to put up their defence. They were permitted to take the help of a co-worker in conducting their defence. The holding of the joint enquiry did not prejudice the workmen. It is denied that the second party had prejudiced the issue. Standing Order 14 of Model Standing Orders do provide for such a termination. The findings of the enquiry officer are not preverse. The allegation of discrimination and victimisation is denied. It is denied that no ground exists for loss of confidence and removal from service. The workmen are not entitled to any relief and the reference deserves to be dismissed.

4. On these pleadings the following issues have been framed by my learned predecessor in office :—

(1) Whether the joint enquiry has seriously prejudiced the workmen ?

(2) Whether reasonable opportunities were given ?

(3) Whether II Party was justified in terminating the services of I Party workmen ?

(4) Whether I Party Workmen are entitled to be reinstated with continuity of service and back wages ?

(5) To what relief, if any, are the workmen of I party entitled to ?

5. In this case on behalf of the second party the enquiry proceedings have been filed and it was submitted by the learned representative of the second party on 4th October 1969 that the second party relies on the enquiry proceedings and is not letting in any oral evidence.

6. The first issue relates to the question whether the joint enquiry has seriously prejudiced the workmen. From the enquiry proceedings it is seen that on 27th May 1968 in the very commencement of the enquiry the enquiry officer has recorded that since the transaction in which the charges are framed are in the course of the same transaction the charges against Sri Narayana Rao and Sri R. A. Manickam is held together. Both the workmen and their representative have signed this order sheet. They have not requested for separate enquiries being held nor have they objected to the joint enquiry. The two workmen have also given evidence in this court. Even in their evidence before the court they do not state that the joint enquiry prejudiced them in any way. The learned Advocate for the first party also did not press this point during his arguments. I therefore hold that the joint enquiry did not prejudice the workmen.

7. The next question for consideration is whether reasonable opportunities were given to the workmen. From the enquiry proceedings it is seen that the workmen were allowed the help of a co-worker in conducting their defence. They were given opportunity to cross-examine the witnesses for the management. They examined themselves and further stated that they had no defence witnesses. The workmen who have examined before this court also do not say that opportunities were not given to them to defend themselves. I therefore hold this issue also against the first party.

8. The main attack against the enquiry is that the findings of the enquiry officer are perverse and that on the evidence on record no misconduct had been made out. The allegations against the workmen are that they left some copper flats at the annealing spot with a view to committing theft of the same or alternatively their leaving of the above material at the annealing spot amounts to gross negligence on their part. The finding of the enquiry officer is that though there is no evidence of actual theft their at in deliberately leaving one bundle of copper flat at the annealing spot and dishonestly asserting that they had brought back all the copper flats to the department is sufficient to establish that both the workmen have lost the confidence which the management reposed on them. From the above finding of the enquiry officer it is clear that the alternative charge of gross negligence has not been considered at all and there is no finding in this regard. Hence it can be safely assumed that this alternative chrage of gross negligence has been dropped. The finding is that they deliberately left the material in the annealing spot with a view to commit theft. The question for consideration whether there was any evidence on record for the enquiry officer to come to this conclusion. Seven witnesses have been examined by the management in the enquiry. M.W. 1 R. Ramanujam, Assistant Foreman has stated that he deputed Narayana Rao, Ranganath and Manickyam to take delivery of materials for annealing. On that day since there was failure of water annealing was not done. Since a worker of the maintenance told that they would get water he asked the workers to wait for some time He told Ranganath and Manickyam to get water from the maintenance Department. Narayana Rao and Manickam told that they could not get water and they would bring back the copper and he agreed. They brought back the copper by about 10-30 or 11 a.m. He questioned Narayana Rao and Manickyam as also Ranganath whether they had brought back all the copper taken for annealing and they replied in the affirmative. In his cross-examination he stated that the if rods and rolls are big they were made into small bundles for annealing. He admitted that on that day i.e., 11th March 1968 Ranganath told him that he had made two bundles into three. He admitted that when Narayana Rao and Manickam had gone for wood Ranganath

and Narasimha Murthy separated the rolls. M.W. 2 Ranganath stated that to facilitate annealing he had converted the two bundles into three and the other two bundles were intact. In his cross-examination he admitted that he had not told any one that he had made the five bundles into six. He further stated that when the copper was brought back the Supervisor was not there and he did not ask whether all the copper was brought back. He also did not tell the supervisor that all the copper had been brought back. M.W. 3 only says that Narayana Rao sent him back saying that he did not want him. M.W.4 Md. Hussain, watchman says that on 11th March 1968 at about 4 or 4.15 p.m. Ganesh Rao another watchman came and told him and another watchman that some copper bundles were lying near the annealing place. They waited till 7-30 or 8 p.m. and since no one came to take it he phoned to the Watch and Ward superintendent at Yeshavantapur factory. He was not available. At 12 midnight he and the head watchman brought the two bundles lying there to the watch and ward office. In his cross-examination he stated that he saw the copper at the annealing spot at 4 p.m. He says that he did not report this to the sub-assembly foremen or assistant foreman. M.W. 5 Ganesh Rao watchman stated that on 11th March 1968 Narayana Rao and Manickam brought copper to annealing spot and they went away to bring wood. At about 10-45 he went to the cycle stand and returned at 1 p.m. He saw the bundle of copper. He did not count it. He thought that the workmen would come for annealing and was watching the copper. At about 4 p.m. his reliever came and he handed over charge of the copper to his reliever and he and Selvaraj, his reliever, came and reported the copper bundles lying in the annealing spot to Md. Hussain and Aseervadam another watchman. In his cross-examination he stated that the copper left at the spot was kept open and not hidden. M.W. 6 is another watchman Selvaraj and he stated that Ganesha Rao told him that some workers who had come for annealing copper had left copper bundles there alone and so far they had taken them. He says that since the bundles were there alone both himself and Ganesh Rao went and reported the matter to the Head Watchman. Though in his examination in chief he refers to copper as bundles in cross-examination he says that there was only one bundle. M.W. 7 is the Watch and Ward Superintendent and he stated that on 11th March 1968 when he came to the factory at 5-30 p.m. the fact of copper lying at the annealing spot was reported to him.

9. From the evidence of the management witnesses the following facts emerge. On 11th March 1968 five bundles of copper was taken for annealing by Narayana Rao, Manickam and Ranganath on the instructions of M.W. 1. Since there was no water available annealing could not be done. Narayana Rao and Manickam went to search for water. In the meanwhile Ranganath split two bundles into three.

Since annealing could not be done the copper was brought back. When questioned by M.W. 1 Narayana Rao replied that all the copper taken for annealing had been brought back. On these facts the enquiry officer has held that Sri Narayana Rao in order to have his henchman Sri Manickyam in the transaction dispensed with the service of M.W. 3 Narasimhamurthy by telling him to go to his job in the department; both Sri Narayana Rao and Sri Manickyam who left one bundle at the annealing spot when questioned by M.W. 2 Ranganathan on their way back to the department while they were bringing back the copper told a falsehood that all the copper is brought by them and also dissuaded him from going to the annealing spot for check; They also reported the same to M.W. 1. From these circumstances the enquiry officer has come to the conclusion that they deliberately left one bundle of copper flats at the annealing spot with a view to committing theft of the same. I must say that the evidence in the case does not at all point out to this finding. There was absolutely no evidence to hold that Manickam is the henchman of Narayana Rao or that they deliberately left one bundle of copper with a view to commit theft of the same. In the charge-sheet it is alleged that the copper bundle had been fairly concealed near the annealing spot. But the watchman Ganesha Rao says that that it was kept open and not hidden. In fact the evidence of Ganesha Rao that he was present when the copper was brought for annealing and when the workers went to bring wood. When he returned at 1 p.m. he saw copper. Further there is discripancy in the evidence of watchman Md. Hussain and Ganesha Rao. According to Md. Hussain M. W. 4 there were two bundles but according to others there was only one bundle. It is also the evidence of the watchmen that they had kept watch over the annealing spot throughout the day and none came near the spot. Further Ranganath says that when Narayana Rao and Manickyam had gone to bring water he split two bundles into three thus making a total of six bundles. He also admits that he did not report this to Narayana Rao and Manickyam. Therefore the only circumstance that is against Narayana Rao and Manickam is their alleged report that they had brought back all the copper that had been taken for annealing. According to M.W. 2 Narayana Rao and Manickyam told him that they had brought all the copper back and that there was no necessity for him to go there. From this the enquiry officer has found that the workmen told a falsehood and further they dissuaded him from going to the annealing spot for check. I must say that this is a very slender piece of evidence and from this it cannot be concluded that the workmen in question had dissuaded Ranganath from going to the spot. Taking all these facts and circumstances into consideration I hold that there wsa absolutely no material for the enquiry officer to come to the conclusion that the workman in question had deliberately left one bundle of copper at the annealing spot with a view to commit theft of the same. If at all the evidence in the case points out to

an inference of negligence. But as noticed above there is no finding of the enquiry officer in this regard.

10. Another circumstance worth noticing is that the enquiring officer has stated that by their acts in deliberately leaving one bundle copper at the annealing spot the workmen have lost the confidence which the management reposed on them for their honesty and integrity. From this it is seen that the enquiry officer has identified himself with the Management and has held that they have lost the confidence of the management. It was not for him to say whether the incident proved was such as to take away the confidence reposed by the management in the workmen. It was for the higher ups, particularly, the competent authority to say that he has lost confidence in them.

11. It is now well settled that suspicion however strong cannot take the place of proof. In the present case there was no evidence even for entertaining such a suspicion. In these circumstances I hold that the findings of the enquiry officer are perverse and are based on no evidence. Hence it will have to be held that the orders of termination issued to the two workmen in question have to be set aside.

12. One other contention urged by the first party is that this is an instance of victimisation because the workmen are members of the first party union which is not to the liking of the second party. It is alleged that this is an instance of discrimination in that Ranganath who was also involved in the transaction is not proceeded with along with the workmen in question. Some evidence has also been let in by the first party in this behalf. The second party has also let in evidence denying these allegations. However since I have held above that there was no evidence before the enquiry officer implicating these workmen regarding the charges said to have been proved, it is not necessary for me to go into the question of victimisation.

13. On 22nd November 1972 Sri M. C. Narasimhan, learned counsel for the first party filed a memo stating that this case will have to be examined in the light of Section 11A of the Industrial Disputes Act and this submission was made since the matter is pending disposal and since this court has held that Section 11-A of the Industrial Disputes Act applies to pending proceedings also. To this memo Sri K. R. Ramaswamy Iyengar, learned counsel for the second party has stated that Section 11A does not apply to cases in which the dismissal has taken place prior to the amendment of Industrial Disputes Act introducing Section 11A. It is true that I have held in other cases that Section 11A which has come into force from 15th December 1971 applies to pending proceedings also being procedural in nature. But in the present case I have held above that the findings

of the enquiry officer are perverse and that there was no evidence against the workmen in respect of the allegations made against them and that on that account the orders of termination are liable to be set aside. Therefore in the present case there is no necessity to apply Section 11A. Even otherwise it is seen that the evidence adduced at the enquiry does not prove the misconduct as alleged.

13. It was contended by the second party that this is not the case of dismissal or discharges for misconduct but this is a case of termination; that the circumstances proved against the workmen are sufficient to lose confidence in them and therefore the action of the management cannot be interfered with. I am not inclined to accept this contention. What circumstances make an employer lose confidence in a workman depends upon the circumstances of each case. This allegation of loss of confidence should be based on cogent material and should not rest on mere conjectures and suppositions. I have held above that there was no material for the enquiry officer to come to the conclusion which he has done. The punishing authority has accepted the findings of the enquiry officer and has said that he has lost confidence in the workmen. When the basis for this losing confidence itself has not been established it cannot be said that the action of the second party should still be sustained. Accepting the contention of the second party would mean that in every case the managements could contend that they have lost confidence in the workmen and so their action should not be interfered. The management in the present case has held an enquiry into charges which amount to misconduct and on the ground that the charges are proved has proceeded to terminate the services of the workmen. It is in fact a dismissal for alleged misconduct though termed as termination. In the result I answer issue No. 3 that the second party was not justified in dismissing the services of the first party workmen.

14. Now the only point that remains for consideration is the relief that should be awarded to the first party workmen. It is a well accepted principle that the normal relief in the case of unjustified termination from service is reinstatement unless there are exceptional circumstances to the contrary. It is true in the present case it is stated in the order of termination that the services of the workmen have been terminated due to loss of confidence in them. But I have held above that this loss of confidence is not based on cogent and proper grounds. I have also held that there was no evidence on record to hold that the workmen were guilty of the charge which they were alleged. Merely because the second party says that it has lost confidence in the workmen it is not a sufficient ground to depart from the general rule. I therefore find no reasons to depart from the normal rule and deny reinstatement to the first party workmen. In these circumstances I am of opinion that the first party workmen

should be ordered to be reinstated in their former posts with continuity of service.

15. It is seen that more than four years have elapsed from the date of termination of the services of the first party workmen. Further as noticed above the evidence adduced before the enquiry officer goes to show a case of negligence on the part of the workmen in leaving a bundle of copper at the annealing spot. Considering all the facts and circumstances of the case into consideration I am of opinion that it would meet with the ends of justice if 25 per cent back wages are awarded to the workmen.

16. In the result I pass an award directing the second party to reinstate the first party workman Sri Narayana Rao and Sri R. A. Manickyam in their former posts with continuity of service and pay them 25 per cent of their back wages from the date of termination to the date of their reinstatement. No costs.

P. SRINIVASACHARYA,
Presiding Officer,
Labour Court, Bangalore.

"COPY"

P. SRINIVASACHARYA,
Presiding Officer
Labour Court, Bangalore.

ORDER

Bangalore, dated 23rd December 1972

S.O. 149.—**Whereas** by State Government Order No. FCL 113 LLD 69, dated 28th March 1969 the Industrial Dispute between the workmen and the management of Mysore Electrical Industries Ltd., Bangalore-22, was referred to the Labour Court, Bangalore for adjudication,

And, whereas the Labour Court has submitted to the State Government its award in respect of the said Industrial Dispute.

Now, therefore, in exercise of the powers conferred by Section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), the Government of Mysore are pleased to direct the publication of the said award as above, in the **Mysore Gazette.**

[No. FCL 258 LLA 72.]

By Order and in the name of the Governor of Mysore,

ANIRUDHA DESAI,

Under Secretary to Government,

Food, Civil Supplies and Labour Department.